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1980

c 491 Surrogate Courts Act

Ontario

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CHAPTER 491

Surrogate Courts Act

1. In this Act,

Interpre-
tation

- (a) "administration" includes all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special or limited purposes;
- (b) "common form business" means the business of obtaining probate or administration where there is no contention as to the right thereto, including the passing of probate and administration through a surrogate court when the contest is terminated, and all business of a non-contentious nature to be taken in a surrogate court in matters of testacy and intestacy not being proceedings in a suit, and also the business of lodging caveats against the grant of probate of administration;
- (c) "county" includes a provisional judicial district;
- (d) "matters and causes testamentary" includes all matters and causes relating to the grant and revocation of letters probate of wills or letters of administration;
- (e) "will" includes a testament and all other testamentary instruments of which probate may be granted. R.S.O. 1970, c. 451, s. 1.

2. There shall be in and for every county a court of record styled "The Surrogate Court of the County (or Judicial District or District) of..... (*naming the county or district*)". R.S.O. 1970, c. 451, s. 2. Surrogate
court for
each county

3. Every surrogate court shall be provided with a seal approved by the Lieutenant Governor. R.S.O. 1970, c. 451, s. 3. Seal

4. The sittings of the surrogate court shall be held in the county court house or such other place in the county as the senior judge may direct and shall be presided over by a judge thereof. R.S.O. 1970, c. 451, s. 4; 1979, c. 66, s. 18 (1). Sittings

Power to
enforce
judgments
and orders

5. Every surrogate court has the like powers as is possessed by the Supreme Court of enforcing its judgments and orders in any part of Ontario, and may issue the like writs and process as may be issued out of the Supreme Court and the same have the like force and effect as writs and processes issued out of the Supreme Court. R.S.O. 1970, c. 451, s. 5.

Contempt,
etc.

6. Every surrogate court may punish by fine or imprisonment, or by both, for every wilful contempt of or resistance to its process, rules or orders; but the fine shall not in any case exceed \$100, nor shall the imprisonment exceed six months. R.S.O. 1970, c. 451, s. 6.

Rules of
evidence

practice and
procedure

7. The rules of evidence observed in and, except as herein otherwise provided and subject to the surrogate court rules in contentious matters, the practice and procedure of the Supreme Court apply to the surrogate courts, and, with respect to all matters within the jurisdiction of the surrogate courts, such courts and the judges and officers thereof respectively have and may exercise all the powers of the Supreme Court and of the judges and officers thereof. R.S.O. 1970, c. 451, s. 7.

Appointment
of judges

8.—(1) The Lieutenant Governor in Council shall appoint as many judges of the surrogate courts as the Lieutenant Governor in Council considers necessary and may designate one of the judges of a surrogate court as the senior judge of the court.

Term of
office

(2) Every judge of a surrogate court shall hold office during good behaviour and may be removed from office by the Lieutenant Governor in Council for inability, incapacity or misbehaviour established to the satisfaction of the Lieutenant Governor in Council. 1979, c. 66, s. 18 (2).

Same judge
in more
than one
county

(3) The same person may be appointed to and hold the office of judge of the surrogate court of more than one county. R.S.O. 1970, c. 451, s. 8 (2); 1979, c. 66, s. 18 (3).

Salary where
judge not
county
judge

(4) Where a judge of a surrogate court is not also a judge of the county court, the Lieutenant Governor in Council may fix his salary which shall be paid out of the Consolidated Revenue Fund. R.S.O. 1970, c. 451, s. 8 (3); 1979, c. 66, s. 18 (4).

9.—(1) Where there is a vacancy in the office of a judge of a surrogate court or a judge of a surrogate court is absent or ill, any judge who has authority to preside over any surrogate, county or district court or any barrister of ten years standing may, when so directed by the Attorney General, act as a judge of the surrogate court. Acting judge

(2) Where a judge of a surrogate court requests in writing any judge who has authority to preside over any surrogate, county or district court or any barrister of ten years standing to preside over the surrogate court of the judge making the request, such judge or barrister may act as judge of the surrogate court. 1979, c. 66, s. 18 (5). Acting judge, on request

(3) Where a judge of a county court who is also judge of the surrogate court vacates his county court judgeship, unless the Lieutenant Governor in Council otherwise directs, he shall thereby vacate his judgeship of the surrogate court. R.S.O. 1970, c. 451, s. 9 (3). When judgeship of surrogate court vacated

10. Every judge of the surrogate court shall take and subscribe the following oath before the chief judge or a judge designated by him: Oath of office

I, do swear
that I will, truly and faithfully, according to my skill and knowl-
edge, execute the several duties, powers and trusts of judge of
The Surrogate Court of the
of..... So help me God.

1971, c. 59, s. 1.

11.—(1) A judge appointed for the surrogate court of one or more counties may exercise the powers and perform the duties of a surrogate court judge in any other county in the same manner and to the same effect as a judge appointed for that county. 1972, c. 8, s. 1. Judge acting outside county

(2) Every judge appointed under this Act who is a judge of a county or district court has the powers of a surrogate court judge appointed under this Act in any other county or district while he is authorized to act as a county or district court judge therein. R.S.O. 1970, c. 451, s. 11 (2); 1979, c. 66, s. 18 (6). Idem

12.—(1) The Lieutenant Governor in Council may appoint a registrar for each surrogate court and may ap- Appointment of registrar and staff

point such persons to the staff of the registrar's office as are considered necessary, and may fix their position specifications, salary ranges and terms and conditions of employment. R.S.O. 1970, c. 451, s. 12 (1).

Temporary
appointments

(2) The Attorney General, or any public servant designated by him in writing for the purpose, may make temporary appointments to the staff of a registrar's office for a term not exceeding one year. R.S.O. 1970, c. 451, s. 12 (2); 1972, c. 1, s. 9 (7).

Surrogate
Clerk for
Ontario

(3) The registrar for The Surrogate Court of the Judicial District of York is by virtue of his office the Surrogate Clerk for Ontario. 1977, c. 43, s. 1.

Oath of
registrar

13. Every registrar, before entering upon the duties of his office, shall take and subscribe the following oath:

I,, do swear that I will diligently and faithfully execute the office of Registrar of the Surrogate Court of the, and that I will not knowingly permit or suffer any alteration, obliteration or destruction to be made or done, of any will or testamentary paper, or other document or paper committed to my charge. So help me God.

R.S.O. 1970, c. 451, s. 13.

Security

R.S.O. 1980,
c. 415

14. Every registrar, before entering upon the duties of his office, shall furnish such security as is required by the Lieutenant Governor in Council for the due performance of the duties of his office, and the provisions of the *Public Officers Act* relating to the giving of security apply to such security. R.S.O. 1970, c. 451, s. 14.

Registrar's
office

15. The registrar shall keep his office in the court house of the county, and a room therein shall be provided for that purpose, and, in the event of there being no available room therein, then at such place in the county town as the judge may direct. R.S.O. 1970, c. 451, s. 15.

Holiday
defined

16.—(1) In this section, "holiday" means,

(a) Saturday;

(b) Sunday;

- (c) a day that is a holiday for civil servants as prescribed by the regulations under the *Public Service Act*. 1977, c. 43, s. 2. R.S.O. 1980,
c. 418

(2) Except on holidays when they shall be closed, every surrogate court office shall be kept open from 9.30 o'clock in the forenoon until 4.30 o'clock in the afternoon. 1971, c. 59, s. 2, *part*. Office hours

17. The office of the registrar is a depository for all wills of living persons given to him for safe keeping, and the registrar shall receive and keep the same upon payment of such fees and under such regulations as are prescribed by the surrogate court rules. R.S.O. 1970, c. 451, s. 17. Depository
for the wills
of living
persons

18. The registrar shall file and preserve all original wills of which probate or letters of administration with the will annexed are granted, and all other papers used in any matter in his court, subject to such regulations as are prescribed by the surrogate court rules. R.S.O. 1970, c. 451, s. 18. Preservation
of testamen-
tary instru-
ments, etc.

19. Where books, documents, papers or other material have been preserved in the office of the registrar for so long that it appears they need not be preserved any longer, an order authorizing the Inspector of Legal Offices to cause their destruction or other disposition may be made by the Chief Judge of the County and District Courts. 1971, c. 59, s. 3. Destruction
of documents

20. On the third day of every month, or oftener if required by the surrogate court rules, every registrar shall transmit by mail to the Surrogate Clerk for Ontario a list, in such form and containing such particulars as are prescribed by such rules, of the grants of probate and administration made by his court up to the last day of the preceding month, and he shall in like manner make a return of every revocation of grant of probate or administration. R.S.O. 1970, c. 451, s. 19; 1971, c. 59, s. 4. Transmission
to Surrogate
Clerk for
Ontario of
list of grants,
etc.

21. A registrar shall not for fee or reward draw or advise upon any will or upon any paper or document connected with the duties of his office for which a fee is not expressly allowed to him by the tariff. R.S.O. 1970, c. 451, s. 20. Registrar
not to take
fee for
drawing or
advising on
certain
documents

22. Subject to the *Judicature Act*, all jurisdiction and authority in relation to matters and causes testamentary, Testamen-
tary juris-
diction to
be exercised
by the
surrogate
courts
R.S.O. 1980,
c. 223

and in relation to the granting or revoking of probate of wills and letters of administration of the property of deceased persons, and all matters arising out of or connected with the grant or revocation of grant of probate or administration, are vested in the several surrogate courts. R.S.O. 1970, c. 451, s. 21.

No action
for legacy or
distribution
of residue

23. An action for a legacy or for the distribution of a residue shall not be entertained by a surrogate court. R.S.O. 1970, c. 451, s. 22.

Adminis-
tration not to
be granted to
non-resident

24. Letters of administration shall not be granted to a person not residing in Ontario, but this does not apply to resealing letters under section 77. R.S.O. 1970, c. 451, s. 23.

Probate or
letters
ancillary to
persons not
residing in
Common-
wealth

25. Letters probate shall not be granted to a person not resident in Ontario or elsewhere in the Commonwealth unless the person has given the like security as is required from an administrator in case of intestacy or in the opinion of the judge such security should under special circumstances be dispensed with or be reduced in amount. R.S.O. 1970, c. 451, s. 24.

Grant, of
probate or
adminis-
tration,
jurisdiction

26.—(1) The granting of probate or letters of administration belongs to the surrogate court of the county in which the testator or intestate had at the time of his death his fixed place of abode.

Where
decedent had
no abode
in Ontario

(2) If the testator or intestate had no fixed place of abode in or resided out of Ontario at the time of his death, the grant may be made by the surrogate court of any county in which the testator or intestate had property at the time of his death.

When any
court may
make grant

(3) In other cases the granting of probate or letters of administration belongs to any surrogate court. R.S.O. 1970, c. 451, s. 25.

Where
surrogate
judge is
applicant

27. Where the person or one of the persons entitled to apply for probate of a will or for letters of administration is judge of the court having jurisdiction in the matter and he does not renounce, application by him for such probate or letters and any subsequent application in the matter of the estate by him or by any other person may be made to the judge of the surrogate court for an adjoining county who has the same authority as to such application and generally in all matters connected with the estate as if he were the judge of the surrogate court having jurisdiction, and he is entitled to

the same fees as he would have been entitled to if the application had been made or proceedings had been taken in the court of which he is judge. R.S.O. 1970, c. 451, s. 26.

28.—Letters probate and letters of administration granted by a surrogate court not having jurisdiction to grant the same have, until revoked, the same force and effect as if they had been granted by a surrogate court having jurisdiction. R.S.O. 1970, c. 451, s. 27. Effect of probate granted without jurisdiction

29. Letters probate and letters of administration have effect in all parts of Ontario. R.S.O. 1970, c. 451, s. 28. Effect of probate and administration

30.—(1) The court may cause any question of fact arising in any proceeding therein to be tried by a jury before the judge of the court, and such trial shall take place at some ensuing sittings of the county court for the county, and be conducted in the same manner as other trials by jury in such court, and the parties are entitled to their right of challenge, and for all purposes of or incidental to the trial of questions of fact by a jury the court and the judge thereof have the same jurisdiction, power and authority in all respects as belong to the county courts and the judges thereof for like purposes. Trial of questions of fact by a jury

(2) The question directed to be tried by a jury shall be reduced to writing in such form as the court may direct. R.S.O. 1970, c. 451, s. 29. The issue

31.—(1) Whether a suit or other proceeding is or is not pending in the court with respect to a probate or administration, every surrogate court may, on motion or otherwise in a summary way, order any person to produce and bring before the registrar, or otherwise as the court may direct, any paper or writing being or purporting to be testamentary that is shown to be in the possession or under the control of such person. Production of instruments purporting to be testamentary

(2) If it is not shown that such paper or writing is in the possession or under the control of such person, but it appears that there are reasonable grounds for believing that he has knowledge of such paper or writing, the court may direct such person to attend for the purpose of being examined in open court or before the registrar or such person as the court may direct, or upon interrogatories respecting the same, and to produce and bring in such paper or writing, and such person is subject to the like process in case of default in not attending or in not answering questions or interrogatories or not bringing in Examination of persons touching such instruments

such paper or writing, as he would have been subject to if he had been a party to a suit in the court and had made such default, and the costs of such motion or other proceeding are in the discretion of the court. R.S.O. 1970, c. 451, s. 30.

Removal of
proceeding
to S.C.O.

32.—(1) Any contentious cause or proceeding may be removed into the Supreme Court by order of a judge of such court if it is of such a nature and of such importance as to render it proper that it should be disposed of by the Supreme Court, and the property of the deceased exceeds \$20,000 in value.

Terms

(2) The judge may impose such terms as to payment of or security for costs or otherwise as he considers just.

Transmission
of judgment
to surrogate
court

(3) The judgment of the Supreme Court in any cause or proceeding so removed shall be certified to the registrar of the surrogate court from which the cause or proceeding was removed. R.S.O. 1970, c. 451, s. 31.

Right of
appeal

33.—(1) Any party or person taking part in the proceedings may appeal to the Divisional Court from any order, determination or judgment of a surrogate court or a judge thereof in any matter or cause if the value of the property affected by such order, determination or judgment exceeds \$200.

Rights of
persons
interested
to appeal

(2) Where the claimant or personal representative having a right of appeal does not appeal from the order, judgment or determination, the Official Guardian or any person beneficially interested in the estate may, by leave of a judge of the Divisional Court, appeal therefrom.

Rights of
persons
interested
to be heard
at appeal

(3) The Official Guardian or any person beneficially interested in the estate, may, by leave of a judge of the Divisional Court, appear and be heard upon any such appeal.

Manner
and time
of appeal

(4) Every appeal under this section shall be made by notice of motion served upon all parties interested within thirty days after the date of the judgment, determination or order appealed from, and when the circumstances of any case in the opinion of a judge of the Divisional Court so warrant, he may permit service to be effected by registered mail.

Extension
of time
for appeal

(5) The time limited for appeal by this section may be extended by a judge of the Divisional Court either before or after the expiry of the time limit.

Rules of
court

(6) The rules of court apply to such appeals. R.S.O. 1970, c. 451, s. 32.

34. In the case of any order, determination or judgment made or given by a surrogate court or a judge thereof in respect of which an appeal is not otherwise provided under this Act, an appeal lies to the Divisional Court in accordance with the rules of court. R.S.O. 1970, c. 451, s. 33, *revised*.

Appeals
from
interlocutory
orders, etc.

35.—(1) On every application for probate of a will or for letters of administration where the deceased was resident in Ontario at the time of his death, his place of abode at the time of his death shall be made to appear by affidavit of the person or one of the persons making the application, and thereupon and upon proof of the will or, in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted.

Where
deceased
resided in
Ontario

(2) Where, upon the application for probate of the will of a person who at the time of the execution of the will was a member of the forces or was a mariner or seaman at sea or in the course of a voyage, it appears that the witnesses are dead or are incompetent or that the whereabouts of the witnesses, or either of them, is unknown, the judge of the surrogate court to whom the application is made may accept such evidence as he considers satisfactory as to the validity and proper execution of such will, notwithstanding anything in this Act or in the rules or regulations of the surrogate court to the contrary.

Death or
absence of
witnesses
of will of
member of
forces or
mariner

(3) In subsection (2), "member of the forces" means a member of a component of the Canadian Forces,

Interpre-
tation

(a) that is referred to in the *National Defence Act* (Canada) as a regular force; or

R.S.C. 1970,
c. N-4

(b) while placed on active service under the *National Defence Act* (Canada). 1977, c. 43, s. 3.

36. On every application for probate of a will or for letters of administration where the deceased had no fixed place of abode in or resided out of Ontario at the time of his death, the same shall be made to appear by affidavit of the person or one of the persons making the application, and that the deceased died leaving property in the county to the

Where
deceased
had no
fixed place
of abode in
Ontario

surrogate court of which the application is made, or leaving no property in Ontario, as the case may be, and thereupon and upon proof of the will or, in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted. R.S.O. 1970, c. 451, s. 35.

Conclusive-
ness of
affidavits

37. The affidavit as to the place of abode and property of the deceased under sections 35 and 36, for the purpose of giving a particular court jurisdiction is conclusive for the purpose of authorizing the exercise of such jurisdiction, and no grant of probate or administration is liable to be recalled, revoked or otherwise impeached by reason that the deceased had no fixed place of abode in the particular county, or had not property therein at the time of his death, but in case it is made to appear to the judge of the surrogate court before whom the application is pending that the place of abode of the deceased, or the situation of his property, has not been correctly stated in the affidavit, the judge may stay all further proceedings and make such order as to the costs of the proceedings before him as he considers just. R.S.O. 1970, c. 451, s. 36.

Proof, etc.,
requisite for
obtaining
grant to
party not
next-of-kin
to intestate

38. Where application is made for letters of administration by a person not entitled to the same as next-of-kin of the deceased, an order shall be made requiring the next-of-kin, or others having or pretending interest in the property of the deceased, resident in Ontario, to show cause why the administration should not be granted to the person applying therefor; and if neither the next-of-kin nor any person of the kindred of the deceased resides in Ontario, a copy of the order shall be served or published in the manner prescribed by the surrogate court rules. R.S.O. 1970, c. 451, s. 37.

Temporary
adminis-
tration in
certain cases

39.—(1) If the next-of-kin, usually residing in Ontario and regularly entitled to administer, is absent from Ontario, the court having jurisdiction may grant a temporary administration to the applicant, or to such other person as the court thinks fit, for a limited time, or subject to be revoked upon the return of such next-of-kin to Ontario.

Security to
be given

(2) The administrator so appointed shall give such security as the court may direct, and has all the rights and powers of a general administrator, and is subject to the immediate control of the court. R.S.O. 1970, c. 451, s. 38.

Quebec
notarial
wills

40. A notarial will made in the Province of Quebec may be admitted to probate without the production of the original will

upon filing a notarial copy thereof together with the other proper proofs to lead grant. R.S.O. 1970, c. 451, s. 39.

41. Notice of every application for the grant of probate or administration shall be transmitted by the registrar by registered mail to the Surrogate Clerk for Ontario by the next post after the application, and the notice shall specify the name and description or addition, if any, of the deceased, the time of his death, and the place of his abode at his decease, as stated in the affidavits made in support of the application, and the name of the person by whom the application is made, and such other particulars as are prescribed by the surrogate court rules. R.S.O. 1970, c. 451, s. 40; 1971, c. 59, s. 5.

Notice to
Surrogate
Clerk for
Ontario of
applications

42. Unless upon special order of the court, no probate or administration shall be granted until the registrar has received a certificate under the hand of the Surrogate Clerk for Ontario that no other application appears to have been made in respect of the property of the deceased, which certificate the Surrogate Clerk for Ontario shall forward as soon as may be to the registrar. R.S.O. 1970, c. 451, s. 41; 1971, c. 59, s. 6.

Certificate
from
Surrogate
Clerk for
Ontario

43. All notices in respect of applications shall be filed and kept by the Surrogate Clerk for Ontario. R.S.O. 1970, c. 451, s. 42; 1971, c. 59, s. 7.

Surrogate
Clerk for
Ontario to
file notices

44. The Surrogate Clerk for Ontario shall, with reference to every such notice, examine all notices of such applications received from the several registrars so far as appears to be necessary to ascertain whether or not application for probate or administration in respect of the property of the deceased has been made in more than one surrogate court, and he shall communicate with the registrars as occasion requires in relation to such applications. R.S.O. 1970, c. 451, s. 43; 1971, c. 59, s. 8.

Duty of
Surrogate
Clerk for
Ontario with
reference to
notices

45.—(1) Where it appears by the certificate of the Surrogate Clerk for Ontario that application for probate or administration has been made to two or more surrogate courts, the judges of such courts respectively shall stay proceedings therein, leaving the parties to apply to a judge of the Supreme Court for such direction in the matter as he considers necessary. R.S.O. 1970, c. 451, s. 44 (1); 1971, c. 59, s. 9 (1).

Where
application
made to
more than
one surro-
gate court

(2) On application made to such judge, he shall inquire into the matter in a summary way and adjudge and determine what surrogate court has jurisdiction.

Judgment
as to what
court has
jurisdiction

Order as
to costs

(3) The judge may order costs to be paid by any of the applicants, and the order shall be enforced by the Supreme Court. R.S.O. 1970, c. 451, s. 44 (2, 3).

Judge's
decision
final

(4) The determination of the judge is final and conclusive, and the Surrogate Clerk for Ontario shall without delay transmit a certified copy of the judge's order to the registrars of the surrogate courts wherein such applications were made. R.S.O. 1970, c. 451, s. 44 (4); 1971, c. 59, s. 9 (2).

Caveats

46. Caveats against the grant of probate or administration may be lodged with the Surrogate Clerk for Ontario or with the registrar of a surrogate court. R.S.O. 1970, c. 451, s. 45; 1971, c. 59, s. 10.

Notice of
caveats

47. Upon a caveat being lodged, the registrar shall without delay send a copy thereof to the Surrogate Clerk for Ontario to be entered among the caveats lodged with him, and, upon notice of an application being received from the registrar of a surrogate court under section 41, the Surrogate Clerk for Ontario shall without delay forward to him notice of any caveat that has been so lodged touching such application, and the notice shall accompany or be embodied in the certificate mentioned in section 42. R.S.O. 1970, c. 451, s. 46; 1971, c. 59, s. 11.

Citation of
persons
interested

48. Where proceedings are taken for proving a will in solemn form or for revoking the probate of a will on the ground of the invalidity thereof or where in any other contentious cause or matter the validity of a will is disputed, all persons having or pretending to have an interest in the property affected by the will may, subject to this Act and to the surrogate court rules, be summoned to see the proceedings and may be permitted to become parties, subject to such rules and to the discretion of the court. R.S.O. 1970, c. 451, s. 47.

Citation to
prove or
renounce

49. The court having jurisdiction may summon any person named executor of any will to prove, or refuse to prove, such will, and to bring in inventories and to do every other thing necessary or expedient concerning the same. R.S.O. 1970, c. 451, s. 48.

Conse-
quences of
failure to
appear

50. When an executor survives the testator, but dies without having taken probate, and when an executor is summoned to take probate, and does not appear, his right in respect of the executorship wholly ceases, and the representation to the testator, and the administration of his property, without any further renunciation, goes, devolves, and is committed in like manner as if such person had not been appointed executor. R.S.O. 1970, c. 451, s. 49.

51.—(1) Where a minor is sole executor, administration with the will annexed shall be granted to the guardian of the minor or to such other person as the court thinks fit, until the minor has attained the full age of eighteen years, at which time, and not before, probate of the will may be granted to him. R.S.O. 1970, c. 451, s. 50 (1); 1971, c. 98, s. 4, Sched., par. 34.

Where a
minor sole
executor

(2) The person to whom such administration is granted has the same powers as an administrator has by virtue of an administration granted to him *durante minore aetate* of the next-of-kin. R.S.O. 1970, c. 451, s. 50 (2).

Power of
adminis-
trator in
such case

52. An official copy of the whole or any part of a will or an official certificate of the grant of any letters of administration may be obtained from the registrar on payment of the prescribed fees. R.S.O. 1970, c. 451, s. 51.

Official
copies

53. Pending an action touching the validity of the will of a deceased person, or for obtaining, recalling or revoking any probate or grant of administration, the surrogate court having jurisdiction to grant administration in the case of intestacy may appoint an administrator of the property of the deceased person, and the administrator so appointed has all the rights and powers of a general administrator, other than the right of distributing the residue of the property, and every such administrator is subject to the immediate control and direction of the court, and the court may direct that such administrator shall receive out of the property of the deceased such reasonable remuneration as the court considers proper. R.S.O. 1970, c. 451, s. 52.

Adminis-
tration
pending
action

54.—(1) Subject to subsection (3), where a person dies intestate or the executor named in the will refuses to prove the will, administration of the property of the deceased may be committed by the surrogate court having jurisdiction to the husband, or to the wife, or to the next-of-kin, or to the wife and next-of-kin, as in the discretion of the court seems best, and, where more persons than one claim the administration as next-of-kin who are equal in degree of kindred to the deceased, or where only one desires the administration as next-of-kin where there are more persons than one of equal kindred, the administration may be committed to such one or more of such next-of-kin as the court thinks fit.

To what
persons
adminis-
tration shall
be granted

(2) Subject to subsection (3), where a person dies wholly intestate as to his property, or leaving a will affecting property but without having appointed an executor thereof, or an executor willing and competent to take probate and the persons entitled to administration, or a majority of such of them as are resident in Ontario, request that another

Appointment
at request
of parties
interested

person be appointed to be the administrator of the property of the deceased, or of any part of it, the right that such persons possessed to have administration granted to them in respect of it belongs to such person.

General power as to appointment of administrator under special circumstances

(3) Where a person dies wholly intestate as to his property, or leaving a will affecting property but without having appointed an executor thereof willing and competent to take probate, or where the executor was at the time of the death of such person resident out of Ontario, and it appears to the court to be necessary or convenient by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the property of the deceased, or of any part of such property, other than the person who if this subsection had not been enacted would have been entitled to the grant of administration, it is not obligatory upon the court to grant administration to the person who if this subsection had not been enacted would have been entitled to a grant thereof, but the court may appoint such person as it thinks fit upon his giving such security as it may direct, and every such administration may be limited as it thinks fit.

Appointment of trust company

(4) A trust company may be appointed as administrator under subsection (2) or (3), either alone or jointly with another person. R.S.O. 1970, c. 451, s. 53.

After grant of administration no person to act as executor

55. After a grant of administration, no person, other than the administrator or executor, has power to sue or prosecute any action or otherwise act as executor of the deceased as to the property comprised in or affected by such grant of administration until such administration has been recalled or revoked. R.S.O. 1970, c. 451, s. 54.

Administration limited to personal estate

56. A person entitled to letters of administration to the property of a deceased person is entitled to take out such letters limited to the personal estate of the deceased, exclusive of the real estate. R.S.O. 1970, c. 451, s. 55.

Evaluation

57.—(1) The person applying for a grant of probate or administration shall before it is granted make or cause to be made and delivered to the registrar a true statement of the total value, verified by the oath of the applicant, of all the property that belonged to the deceased at the time of his death.

Evaluation of subsequently discovered property

(2) When after the grant of probate or letters of administration any property belonging to the deceased at the time of his death and not included in such statement of total value is discovered by the executor or administrator, he shall, within six months thereafter, deliver to the regis-

trar a true statement of the total value, duly verified by oath, of such newly discovered property.

(3) Where the application or grant is limited to part only of the property of the deceased, it is sufficient to set forth in the statement of value only the property and value thereof intended to be affected by such application or grant. 1977, c. 43, s. 4. Evaluation of limited grant

58.—(1) Where after a grant has issued out of the surrogate court the value of the estate has been increased for succession duty purposes, the executor or administrator shall forthwith pay to the registrar of the court from which the grant issued the additional fees that would have been payable at the time of the issue if the value of the estate had been placed at the amount to which it has been so increased, and the registrar shall account for such additional fees in the same manner as if they had been paid at the time of the issue of the grant. Fees on increased valuation

(2) Where after a grant has issued out of the surrogate court the value of the estate has been decreased for succession duty purposes, the executor or administrator may apply to the registrar of the court from which the grant issued for a refund of the amount of the difference between the amount of the fees paid and the amount of the fees that would have been payable at the time of the issue if the value of the estate had been placed at the amount to which it was so decreased, and the registrar shall make such refund and amend his records accordingly. R.S.O. 1970, c. 451, s. 57. Fees on decreased valuation

59. Where a person renounces probate of the will of which he is appointed an executor, his rights in respect of the executorship wholly cease, and the representation to the testator and the administration of his property, without any further renunciation, goes, devolves and is committed in like manner as if such person had not been appointed executor. R.S.O. 1970, c. 451, s. 58. Consequences upon executor renouncing

60. Except where otherwise provided by law, every person to whom a grant of administration, including administration with the will annexed, is committed shall give a bond to the judge of the court by which the grant is made, to enure for the benefit of the judge of the court for the time being, or in case of the separation of counties, to enure for the benefit of any judge of a surrogate court to be named by the Supreme Court for that purpose, with a surety or sureties as may be required by the judge, conditioned for the due collecting, getting in, administering and accounting for the property of the deceased, and the bond shall be in the form prescribed by the surrogate court rules, and in cases not provided for by the rules, the bond shall be in such form as the judge by special order may direct. R.S.O. 1970, c. 451, s. 59. Bonds

When
security not
required

61.—(1) It is not necessary for the Government of Ontario or any ministry thereof or any Provincial commission or board created under any Act of the Legislature to give any security for the due performance of its duty as executor, administrator, trustee, committee, or in any other office to which it may be appointed by order of the court or under any Act. R.S.O. 1970, c. 451, s. 60 (1); 1972, c. 1, s. 2.

Idem

(2) A bond shall not be required where the administration on an intestacy is granted to the surviving spouse of the deceased and where,

R.S.O. 1980,
c. 488

(a) the net value of the estate as computed for the purposes of section 45 of the *Succession Law Reform Act* does not exceed \$75,000; and

(b) there is filed with the application for administration an affidavit setting forth the debts of the estate. 1973, c. 19, s. 1; 1977, c. 43, s. 5 (1).

Amount of
security

62.—(1) The bond shall be in a penalty of double the amount under which the property of the deceased has been sworn, and the judge may direct that more than one bond be given so as to limit the liability of any surety to such amount as the judge considers proper.

Power to
reduce
amount

(2) The judge may at any time under special circumstances reduce the amount of or dispense with the bond. R.S.O. 1970, c. 451, s. 61.

Power of
courts as to
assignment
of bonds

63. The judge on application made in a summary way and on being satisfied that the condition of the bond has been broken may order the registrar to assign the bond to some person to be named in the order, and such person is thereupon entitled to sue on the bond in his own name as if it had been originally given to him, and shall recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the bond. R.S.O. 1970, c. 451, s. 62.

Accounts to
be rendered

64. The oaths to be taken by executors, administrators and guardians, and the bonds or other security to be given by administrators and guardians, and probates, letters of administration and letters of guardianship shall require the executor, administrator or guardian to render a just and full account of his executorship, administration or guardianship only when thereunto lawfully required. R.S.O. 1970, c. 451, s. 63.

65.—(1) Where a surety for an administrator or guardian dies or becomes insolvent or where for any other reason the security furnished by an administrator or guardian becomes inadequate or insufficient, the judge may require other or additional security to be furnished, and if it is not furnished as directed by the judge, he may revoke the grant of administration or letters of guardianship.

New or additional security in certain cases

(2) The order may be made by the judge on his own initiative or on the application of any person interested.

Order by judge or on application

R.S.O. 1970, c. 451, s. 64.

66.—(1) Where a surety for an administrator or guardian desires to be discharged from his obligation or where an administrator or guardian desires to substitute other security for that furnished by him, the judge may allow other security to be furnished in lieu of that of such surety or of the security so furnished on such terms as he considers proper, and he may direct that, on the substituted security being furnished, and, if the judge so directs, the accounts of the administrator or guardian being passed, the surety or sureties be discharged.

Substitution of security

(2) The application may be made *ex parte* or on such notice as the judge may direct.

How application made

67. Where an executor or administrator has passed his final account and has paid into court or distributed the whole of the property of the deceased that has come to his hands, the judge may direct the bond or other security furnished by the executor or administrator to be delivered up to be cancelled.

Cancellation of security

68. Where an executor or administrator has produced evidence to the satisfaction of the judge that the debts of the deceased have been paid and the residue of the estate duly distributed, the judge may make an order directing the bond or other security furnished by the executor or administrator to be delivered up to be cancelled, but where a minor was or is entitled to a part of the estate under the distribution, the order shall not be made until after such notice as the judge may direct has been given to the Official Guardian, and where any person who is a patient in a psychiatric facility under the *Mental Health Act* was or is entitled to a part of the estate under the distribution, the order shall not be made until after like notice has been given to the Public Trustee.

Cancellation of bond of administrator in distribution of estate

R.S.O. 1980, c. 262

69.—(1) Where a claim or demand is made against the estate of a deceased person or where the personal representative has notice of such claim or demand, he may serve

Contestation of claims against estate

the claimant with a notice in writing that he contests the same in whole or in part, and, if in part, stating what part, and also referring to this section.

Application
for order
allowing
claim

(2) Within thirty days after the receipt of such notice of contestation or within three months thereafter if the judge of the surrogate court on application so allows, the claimant may, upon filing with the registrar a statement of his claim verified by affidavit and a copy of the notice of contestation, apply to the judge of the surrogate court for an order allowing his claim and determining the amount of it, and the judge shall hear the parties and their witnesses and shall make such order upon the application as he considers just, and if the claimant does not make such application, he shall be deemed to have abandoned his claim and it is forever barred.

Claim within
jurisdiction
of small
claims court

(3) Where the claim is within the jurisdiction of the small claims court, an application for the extension of time referred to in subsection (2) and the application for the order shall be made to the judge of a small claims court in which an action for the recovery of the claim might be brought, and the application for the order shall be heard by the judge at the sittings of such court, but where the claimant and the personal representative consent, the applications may be made to the judge of the surrogate court.

Notice in
such cases

(4) Not less than seven days notice of the application shall be given to the personal representative, and where the application is to be made to the judge of the surrogate court, shall also be given to the Official Guardian if minors are concerned, and to such, if any, of the persons beneficially interested in the estate as the judge may direct.

Right of
persons
interested to
be heard

(5) Where the application is made to the judge of the surrogate court, in addition to the persons to whom notice has been given, any other person who is interested in the estate has the right to be heard and to take part in the proceedings.

Consent to
jurisdiction
of surrogate
court in
certain cases

(6) Where the claim, or the part of it that is contested, amounts to \$800 or more, instead of proceeding as provided by this section, the judge shall, on the application of either party, or of any of the parties mentioned in subsection (5), direct the creditor to bring an action for the recovery or the establishment of his claim, on such terms and conditions as the judge considers just but, where the claimant and the personal representative consent to have the trial before the judge of the surrogate court, the trial shall take place and be disposed of before the surrogate court judge under this section.

(7) Where the claim is within the jurisdiction of the small claims court, the fees and costs shall be according to the tariff of that court and in other cases the fees payable to the judge of the surrogate court and to the registrar shall be the same as are allowed on an audit in an estate of a value equal to the amount of the claim or so much thereof as is contested, and the fees to be allowed to counsel or solicitors shall be fixed and determined by the surrogate judge having regard to the amount involved and the importance of the contest.

(8) This section applies, notwithstanding that the claim or demand is not presently payable, and that, for that reason, an action for the recovery of it could not be brought.

(9) The judge may order the issue of a commission to take the testimony of any person or party residing out of Ontario.

(10) The judge may make an order for the taking of the evidence of any material and necessary witness residing in Ontario who is sick, aged or infirm or is about to leave Ontario *de bene esse* and provide to whom notice of the examination is to be given.

(11) A subpoena may be issued to enforce the attendance of witnesses to give evidence on any proceeding under this section.

(12) The rules of the Supreme Court so far as they are applicable apply to every application for such commission or order for examination, the issue, execution, enforcement and return thereof and the judge has power to award costs of all such proceedings according to the tariff in force from time to time for like services in county courts.

(13) Where a claim is established under this section, no proceedings shall be taken to enforce payment of the claim without the permission of the judge.

(14) Where permission to enforce payment of a claim is given, the order shall be filed in the county court and an execution shall issue as upon a judgment of that court and an order for payment of costs may be entered in the same way. R.S.O. 1970, c. 451, s. 68.

70.—(1) Where any claim or demand not within the meaning of subsection 69 (1) is made against the estate of a deceased person or where the personal representative has notice or knowledge of the claim or demand, he may serve the claimant with the notice prescribed in the said subsection.

Application
by claimant
for order for
directions

(2) Within the time limits mentioned in subsection 69 (2), the claimant may, upon filing with the registrar a statement of his claim verified by affidavit and a copy of the notice of contestation, apply to the judge of the surrogate court for an order for directions as to the disposition of the claim or demand, and if the claimant does not make the application he shall be deemed to have abandoned his claim, and it is forever barred.

Notice in
such cases

(3) Not less than seven days notice of the application shall be given to the personal representative and to the Official Guardian if infants are concerned and to such, if any, of the persons beneficially interested in the estate as the judge may direct.

Powers
of judge

(4) The judge shall make such order upon the application for directions as he considers just and, in particular but without limiting the generality of the foregoing, he may,

(a) direct the claimant to bring an action for the recovery or establishment of his claim on such terms and conditions as he considers just; and

(b) where the claim or demand is not presently recoverable, prescribe the time after which the claimant shall proceed pursuant to the directions.

Idem

(5) By consent of the claimant and personal representative, the judge may direct that the trial take place and be disposed of before the surrogate court judge.

Application
of parts
of s. 69

(6) When an order is made under subsection (4), subsections 69 (9), (10), (11) and (12) apply.

Right of
persons
interested
to appeal

(7) If the personal representative does not appeal from an order made under subsection (2) or (4), the Official Guardian or any person beneficially interested in the estate may, by leave of a judge of the Divisional Court, appeal therefrom.

Right of
persons
interested
to be heard
on appeal

(8) Where the claimant or the personal representative appeals from an order made under subsection (2) or (4), the Official Guardian and any person beneficially interested in the estate may, by leave of the court that hears the appeal, appear and be heard. R.S.O. 1970, c. 451, s. 69.

Summary
determina-
tion of
disputes as to
ownership

71. Where the personal representative of a person claims the ownership of any personal property not exceeding in value \$800 and his claim is disputed by any other person, the dispute may be determined in a summary manner and section 69 applies with necessary modifications. R.S.O. 1970, c. 451, s. 70.

72.—(1) The *Limitations Act* does not affect the claim of a person against the estate of a deceased person where notice of the claim giving full particulars of the claim and verified by affidavit, is filed with the executor or administrator of the estate at any time prior to the date upon which the claim would be barred by the *Limitations Act*, but where no executor or administrator has been appointed, the notice may be filed in the office of the registrar of the surrogate court of the county where the deceased person resided at the date of his death. R.S.O. 1980, c. 240 not to apply in certain cases

(2) Where the claim of a person against any other person would be barred by the *Limitations Act* at any time within three months after the death of the person having the claim, the claim shall for all purposes be deemed not to be barred until three months after the date of such death. Special provision R.S.O. 1970, c. 451, s. 71.

73. An executor who is also a trustee under the will may be required to account for his trusteeship in the same manner as he may be required to account in respect of his executorship. Accounting by executor trustee R.S.O. 1970, c. 451, s. 72

74.—(1) Where an executor, administrator, trustee under a will of which he is an executor, or a guardian, has filed in the proper surrogate court an account of his dealings with the estate, and the judge has approved thereof, in whole or in part, if he is subsequently required to pass his accounts in the Supreme Court, such approval, except so far as mistake or fraud is shown, is binding upon any person who was notified of the proceedings taken before the surrogate judge or who was present or represented thereat and upon every one claiming under any such person. Effect of approval of accounts by surrogate judge

(2) A guardian appointed by the surrogate court may pass the accounts of his dealings with the estate before the judge of the court by which letters of guardianship were issued. Passing accounts by guardians

(3) The judge, on passing the accounts of an executor, administrator or such a trustee, has jurisdiction to enter into and make full inquiry and accounting of and concerning the whole property that the deceased was possessed of or entitled to, and the administration and disbursement thereof in as full and ample a manner as may be done in the Master's office under an administration order, and, for such purpose, may take evidence and decide all disputed matters arising in such accounting, subject to appeal. Powers of judge on passing accounts

(4) The judge, on passing any accounts under this section, has power to inquire into any complaint or claim by any person interested in the taking of the accounts of misconduct, Further powers

neglect, or default on the part of the executor, administrator or trustee occasioning financial loss to the estate or trust fund, and the judge, on proof of such claim, may order the executor, administrator or trustee, to pay such sum by way of damages or otherwise as he considers proper and just to the estate or trust fund, but any order made under this subsection is subject to appeal.

May order trial and give directions as to pleadings, etc.

(5) The judge may order the trial of an issue of any complaint or claim under subsection (4), and in such case he shall make all necessary directions as to pleadings, production of documents, discovery and otherwise in connection with the issue.

Removal to Supreme Court

(6) Any person interested in the taking of such accounts, or any executor, administrator or trustee against whom any complaint or claim has been made on the passing of such accounts as provided in subsection (4) may apply to a judge of the Supreme Court for an order removing the proceedings to the Supreme Court, if in his opinion the claim is of such a nature or of such importance as to render it proper that it should be disposed of by the Supreme Court, and for the purpose of making such application, the applicant is entitled to an adjournment of the proceedings in the surrogate court.

Notice to persons interested

(7) The persons interested in the taking of such accounts or the making of such inquiries are, if resident in Ontario, entitled to not less than seven days notice thereof, and, if resident out of Ontario, are entitled to such notice as the judge may direct.

Notice to persons under disability
R.S.O. 1980,
c. 262

(8) Where a person entitled to notice under subsection (7) is a minor or is of unsound mind and is not a patient in a psychiatric facility under the *Mental Health Act*, his notice shall be served upon the Official Guardian not less than twenty-one days before the day appointed for the passing of the accounts, and unless such notice is so given such person is not bound by the passing of the accounts.

Idem, in mental hospital

(9) Where a person entitled to notice under subsection (7) is a patient in a psychiatric facility under the *Mental Health Act*, his notice shall be served upon the Public Trustee not less than twenty-one days before the day appointed for the passing of the accounts, and unless such notice is so given such person is not bound by the passing of the accounts.

Notice of taking accounts to be served on Public Trustee

(10) Where by the terms of a will or other instrument in writing under which such an executor, administrator or trustee acts, real or personal property or any right or interest therein, or proceeds therefrom have heretofore been given, or are

hereafter to be vested in any person, executor, administrator or trustee for any religious, educational, charitable or other purpose, or are to be applied by him to or for any such purpose, notice of taking the accounts shall be served upon the Public Trustee.

(11) Where a person has died intestate in Ontario and administration has been granted to some person, not one of the next-of-kin, and it appears to be doubtful whether the intestate left any next-of-kin him surviving or that there are no known next-of-kin resident in Ontario, notice of taking the accounts shall be served upon the Public Trustee.

(12) Where accounts submitted to the judge of a surrogate court are of an intricate or complicated character and in his opinion require expert investigation, he may appoint an accountant or other skilled person to investigate and to assist him in auditing the accounts. R.S.O. 1970, c. 451, s. 73.

75.—(1) An executor or an administrator shall not be required by any court to render an account of the property of the deceased, otherwise than by an inventory thereof, unless at the instance or on behalf of some person interested in such property or of a creditor of the deceased, nor is an executor or administrator otherwise compellable to account before any judge.

(2) This section applies notwithstanding any provision to the contrary of any bond or security heretofore given by the executor or administrator. R.S.O. 1970, c. 451, s. 74.

76.—(1) Where letters probate, letters of administration or letters of guardianship are sought and the whole property of the deceased or of the ward does not exceed in value \$1,000, the registrar shall prepare the necessary papers leading to the grant sought, and the bond, if any, and he shall administer the necessary oaths, and the total amount to be charged to the applicant for all the proceedings and services shall be \$2. R.S.O. 1970, c. 451, s. 75 (1), *revised*.

(2) Where letters probate, letters of administration or letters of guardianship are sought and the whole property of the deceased or of the ward does not exceed \$1,000, the fees payable to the judge and the registrar shall be one-half of the fees payable according to the tariff in the case of an estate not exceeding in value \$1,000.

(3) If the judge has reason to believe that the property exceeds in value \$1,000, he shall refuse to proceed with the application until he is satisfied as to the real value.

Fees
where estate
consists of
insurance
moneys and
wearing
apparel

(4) Subject to subsection (1), where the whole property of the deceased or of the ward consists of insurance money or of insurance money and wearing apparel, although general letters probate, general letters of administration or letters of guardianship are sought, the fees payable thereon shall be as follows:

1. Where the insurance money does not exceed \$1,000..... \$4
2. Where the insurance money exceeds \$1,000 but does not exceed \$2,000..... \$6
3. Where the insurance money exceeds \$2,000 but does not exceed \$3,000:..... \$8

Apportion-
ment of
fees

(5) The Lieutenant Governor in Council may apportion the fees payable between the judge and the registrar.

Fees to be
exclusive of
fees payable
to Crown

(6) The fees prescribed by this section are exclusive of any other fees payable to the Crown, and do not include the fees payable in respect of contentious business. R.S.O. 1970, c. 451, s. 75 (2-6).

Manner of
giving effect
to grants of
probate, etc.,
of English or
Colonial
Courts

77.—(1) Where probate or letters of administration or other legal document purporting to be of the same nature granted by a court of competent jurisdiction in the United Kingdom or in a province or territory of Canada or in any British possession is produced to and a copy thereof deposited with the registrar of any surrogate court and the prescribed fees are paid as on a grant of probate or administration, the probate or letters of administration or other document shall, under the direction of the judge, be sealed with the seal of the surrogate court, and thereupon is of the like force and effect in Ontario as if the same had been originally granted by such surrogate court, and is, so far as regards Ontario, subject to any order made by such court, or on appeal therefrom, as if the probate or letters of administration had been granted thereby. R.S.O. 1970, c. 451, s. 76 (1); 1977, c. 43, s. 6 (1).

Letters of
verification
in Quebec

(2) Letters of verification issued in the Province of Quebec shall be deemed to be a probate within the meaning of this section. R.S.O. 1970, c. 451, s. 76 (2).

(3) The letters of administration shall not be sealed with the seal of the surrogate court until a certificate has been filed under the hand of the registrar of the court that issued the letters that security has been given in such court in a sum of sufficient amount to cover as well the assets within the jurisdiction of such court as the assets within Ontario, or in the absence of such certificate, until like security is given to the judge of the surrogate court covering the assets in Ontario as in the case of granting original letters of administration. R.S.O. 1970, c. 451, s. 76 (4). ^{Security required}

78.—(1) Where the judge before whom any matter or proceeding under this Act is tried dies before disposing of it or having heard it has not disposed of it within six months thereafter, any party may, upon notice to all other parties, apply to the Chief Judge of the County and District Courts for an order that the matter or proceeding be reheard by such judge of a surrogate court as he may designate. R.S.O. 1970, c. 451, s. 77 (1); 1979, c. 66, s. 18 (7). ^{Rehearing}

(2) An order made under subsection (1) shall name the place where the matter or proceeding is to be reheard and, in making such order, the chief judge may give such other directions as he considers fit. ^{Idem}

(3) No proceedings in the matter or proceeding shall thereafter be taken without the order of the chief judge after notice. ^{Further proceedings}

(4) Upon such rehearing, the evidence, exhibits and papers used at the trial shall be read and, after argument by counsel, the presiding judge shall deal with the action as on an original trial and shall direct that judgment be entered by the county court clerk in accordance with his findings. ^{Judgment on rehearing}

(5) The costs of the rehearing shall be fixed by the judge presiding at the rehearing, who shall also direct by whom they are to be paid. ^{Costs of rehearing}

(6) An appeal lies from such judgment or finding in the same manner and on the same terms as if the judgment had been pronounced at the trial. R.S.O. 1970, c. 451, s. 77 (2-6). ^{Appeal}

79.—(1) The fees payable upon the value of the estate of the deceased shall be calculated upon the value of the whole estate, including the real estate as well as the personal estate. ^{Fees to be on value of whole estate}

(2) In calculating the value of the real property, there shall be deducted the actual value of any encumbrance thereon. R.S.O. 1970, c. 451, s. 78. ^{Deduction}

Rules
Committee
may make
rules

80. Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may,

- (a) make rules for regulating the practice and procedure in the surrogate courts;
- (b) make rules and regulations regulating and fixing fees and expenses payable to witnesses, in respect of proceedings in such courts;
- (c) prescribe a tariff of fees to be allowed to solicitors and counsel practising in such courts;
- (d) prescribe forms for use in such courts. R.S.O. 1970, c. 451, s. 79; 1979, c. 49, s. 4.